

Application number: 10/728,222

Art Unit: 3694

Applicant/Appellant: Khai Hee Kwan

Examiner: Shahid R. Merchant

Title: Method, apparatus and program for user to determine the ownership cost of a motor vehicle.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

TO: MAIL STOP APPEAL BRIEF-PATENTS

Commissioner for Patents

5 Virginia 22313-1450

REPLY BRIEF

ATTEN: Board of Patent Appeals and Interferences

10

Appellant hereby replies to the Examiner's Answer, mailed 9 June 2008

(hereinafter referred as "Answer") in an Appeal of the final rejection of Claims 1, 5-8, 12-15, 19 and 20 in the above identified patent application.

15

Yours truly,



20

Khai Kwan
Appellant/Applicant
023336

25 24 JUNE, 2008

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REAL PARTY IN INTEREST

5 A statement identifying the real party in interest is contained in Appellant's Appeal Brief.

RELATED APPEALS AND INTERFERENCES

10

A statement identifying related appeals is contained in Appellant's Appeal Brief.

15

STATUS OF CLAIMS

A statement identifying the status of the claims is contained in Appellant's Appeal Brief.

20

STATUS OF AMENDMENTS

25 A statement identifying the status of the amendments is contained in Appellant's Appeal Brief.

SUMMARY OF THE CLAIMED SUBJECT MATTER

30

Statements summarizing the claimed subject matter is contained in Appellant's Appeal Brief.

35

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GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Statements identifying the grounds of rejection to be reviewed on appeal is

5 contained in Appellant's Appeal Brief.

CLAIMS APPEALED

10

A copy of the appealed claims is contained in the Appendix of Appellant's Appeal Brief and in this Appendix which are the same.

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REPLY-ARGUMENTS

The Appellant is agreeable with the Examiner in his Answer at page 2-5 and adopts them

5 accordingly in so far as they are accurate, without prejudice.

1.0 Admission

At page 6 of Answer, under the titled “(10) Response to argument” and the sub-titled “A.

10 Rejection of Claim 1 under USC 112 2nd Paragraph”, the Appellant respectfully disagree and will reply as follows:

The Appellant refers to page 6 where the Examiner stated that the “Appellant’s own admission on page 5, line 24 in the last paragraph states that the claim is ambiguous and confusion as to who/what is sending.” (emphasis in original).

The Appellant respectfully disagrees with the Examiner’s characterization of said statements. For the sake of fairness, the alleged statements (page 5 line 20-24) are provided in verbatim below:

20 20 The examiner’s contention is “ It is ambiguous and confusing as to who or what is providing the various data.” (Page 3 para 8 Final Action)

25 25 It is respectfully submitted that the above issue is NOT one of indefiniteness but rather “ambiguous and confusion as to who/what is sending”. Hence there is no prima facie established by the examiner under 35 USC 112 Para 2 under indefiniteness.

30 Notice that the words “**ambiguous and confusion as to who/what is sending**” are captured within “*quotation*” above. Why are the words in quotation ? It is submitted, the usual practice providing certain words within quotation is to show or emphasize them or to show they were quoted from somewhere or someone else.

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In this case, said words were referencing the paragraph in line 20 which bears the same words sourced from the Examiner's Final Action. Therefore, the Examiner had unfairly mischaracterized his own words as quoted by the Appellant as an admission, particularly when the Appellant was contending the Examiner had failed *prima facie* (see above – reading the paragraph as a whole)

Plain reading will show the Appellant was suggesting that the Examiner had departed from the indefiniteness requirement of 35 USC 112 Para 2 by claiming it is "ambiguous and confusion as to who/what is sending". (in quotation as referencing the Examiner's

10 own words)

The Appellant is contenting that even without identifying who/what is sending there is no indefiniteness with the claimed elements. As noted, the Claim is for "receiving over said network at said central controller" but nowhere does it states who/what is sending. Since 15 "who/what is sending" is never claimed or found in the Claim, then how could the Examiner said they are infinite albeit absent from the Claim ?

There is no case law holding 35 USC 112 Para 2 to mean "ambiguous and confusion", nor does it make sense where the "ambiguous and confusion" arose from an allegation of 20 missing words rather than claimed words. It is clear 35 USC 112 Para 2 must consider words that are in the Claim and not words that are supposed to be in the Claim.

2.0 The element of calculating.

25 (The Appellant refers to Page 7 of Answer.)

The examiner wants this Court to believe that a booking fee must be "calculated". The Examiner suggested reasons for the booking fee to be calculated are restated as follows for clarity:

1. An entity charging a booking fee gains something from it like a profit. Otherwise there would be no reason to charge a booking fee if a business would not profit from it.

2. A profit margin must exist else Broadspeed would go out of business if it was not

5 making a profit.

3. Broadspeed could also lose money on the booking fee, and profit elsewhere in the business, however even in this scenario, the booking fee would have to be set at some minimum amount.

10

4. A booking fee is inherently calculated based on a profit or loss margin, else Broadspeed would not make any money and would go out of business.

Before, the Appellant goes into the nitty-gritty of the booking fee, the particular claimed

15 element should be repeated here for clarity:

“calculating at said central controller the vehicle option premium based on said first data and said third data”

20 Notice the issue is not merely “calculating” but includes first data and third data which the examiner had selectively overlooked. Clearly, such claimed calculating is not based on profit/loss margin (but on first data and third data) nor did the Examiner states how profit/loss margins are related to first data and third data. It is obvious the result of calculating based on first and third data will be different to calculating based on profit or
25 loss margin (which is denied) as asserted by the examiner which incidentally fail to show how this difference is inherent for a 102(b) rejection.

It is submitted there is nothing in Broadspeed or Wall that explains how booking fee is calculated. The examiner is merely asserting (without evidence) it could be calculated based on the rationale that a profit margin must exist and therefore, the booking fee is based on such a margin or be set at some minimum amount. The Appellant respectfully

5 submits there is no evidence of any of this. Inherency requires that the missing element must necessarily be known to one skilled in the art. If this is well-known to be inherent then it would be easy to show booking fee as calculated using profit/loss margins (say in accounting/business texts) but none have been relied on. Even if there is a profit margin, that does not mean the booking fee must necessarily be calculated. A profit margin

10 measures the profitability of a business and not how it priced its goods/services. A high profit margin does not mean the price of the service/good must be high as there is still the other unknown “Cost of Goods Sold” to be mindful. Similarly, a loss margin is a negative in nature and the result would be a negative price, which is not realistic. It is submitted that unless the Examiner could show by example calculation to arrive at 150 Pounds as in

15 Wall’s article or how this calculation could be understood using Profit/loss Margin, the Examiner had not discharged his duty to show *prima facie* “calculating” must be inherently in booking fee.

On balance, it is not far-fetch to consider Broadspeed’s booking fee was arrived by trial
20 and error or by supply and demand from such services found in similar brick mortar enterprise offering vehicles booking. Unlike this claimed invention, Broadspeed is strictly moving from brick mortar (minus the show room and salesman) to an online facility.

3.0 The element of linking to a vehicle manufacturer system.

(The Appellant refers to page 7 of Answer)

5 The Examiner stated that it is implicit to link because Broadspeed needs to get pricing information and guidance from the vehicle manufacturer so they can set their prices etc. This clearly shows the examiner is unaware of the nature of motor-vehicle pricing from manufacturer to dealer like Broadspeed. The appellant submits there is no reason for Broadspeed to link to a vehicle manufacturer as the prices are fixed by volume and based
10 on contract between dealer and manufacturer.

Even if it is linked the prices will not be updated in real time or varies such that a link is necessary. If obtaining prices is the sole reason then the examiner has to show that such prices varies from time to time such that an online link is necessarily justified or inherent.

15 Otherwise, a simple fax will do from the Manufacturer on a daily basis in lieu. It is also unknown in the art that motor-vehicle prices fluctuate and varies such that it needs to be constantly updated in real-time.

20 4.0 The datum

(The Appellant refers to Page 8 of Answer.)

First Data

25 The examiner wrote “ Wall teaches that Delivery takes 12 to 16 weeks...expensive cars.” With respect how is this above read into the limitation wherein data received at central controller is the data representative time of delivery is unexplained ?

30 The claimed element reads “**receiving over said network at said central controller,** vehicle pricing information comprising first data representative of time to delivery of said new vehicle.....” (underline mine for emphasis)

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In Wall, it merely says Broadspeed tells its customer delivery takes 12-16 weeks, but how is this translated to mean that Broadspeed (assume to be central controller) is receiving vehicle pricing information comprising data of time to delivery.... was never 5 explained by the Examiner.

In fact, Wall (the author) merely suggested in generally CARS take 12-16 weeks and expensive cars one year, presumably this information was obtained from Broadspeed.

BUT how is this data (12-16 weeks or one year) is received as claimed. Pray from 10 where/whom is Broadspeed receiving this data to read into the claimed limitation ? At best this data is transmitted to the user (as opposed to receive at central controller).

Second Data - destination

15

Again the same argument for second data. The examiner states “ Wall teaches You can either pick up the car yourself, or ...extra Pounds 799 (including Vat). “ The second data representative of a delivery destination is very clear and this is also received over said network at said central controller as claimed. Surely pick up the car yourself is NOT a 20 destination (data). A destination data is like “London” or “Address” which is received over the said network to said central controller.

The fact that Wall teaches the user can either pick up the car themselves or for extra pounds 799 Broadspeed will make arrangement does not show “destination”. What is further claimed is second data to be received over said network at said controller which is 25 the reverse of what Wall is teaching. In fact, it is obvious Broadspeed is telling its customers that they can come to pick up the car which means users could not provide a destination to pick up as it is already chosen. As for arranging for pick up for extra cost,

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this merely teach Broadspeed informing its clients of such a service over the network to user (clients) but nowhere does it suggest its clients to send a destination data to central controller.

5 Third Data – a price said user is willing to pay for said new vehicle

The examiner wrote “ Broadspeed sends or display a price to an user over the network.

This reads on Appellants limitation receiving over said network....third data representative of a price said user is willing to pay for said new vehicle.”

10

With respect, the actual claimed elements begins with “**receiving over said network at said central controller**” which means it is Boardspeed (central controller) which is receiving the data and NOT sending data to user (since user is NOT central controller).

15

The claimed elements requires “third data representative of a price said user is willing to pay for said new vehicle;” The data is in the form of a PRICE send by user and not as the Examiner suggested whereby user agreeing to a given price by the Broadspeed server after a discount. And because it is a price being received over said network at said central controller, it must mean this data (price) was not originally in the central controller.

20

Therefore, it is clear the Examiner’s suggestion that displaying or sending data to user from central controller is flawed. It is actually the reverse of what is being claimed and therefore is factually wrong to read into this claimed limitation.

25

Remember all the 3 data are “**vehicle pricing information**” which means they are to price something, and therefore they are to be received at the central controller and not send back to user as suggested by the Examiner in Boardspeed.

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5.0 Last Element

Finally, the Appellant believes the Examiner had conceded on the last element “**creating**

5 **a vehicle option contract to lock in said third data**” since no mention of this was found in the “ANSWER”. It is also clear Boardspeed does not create vehicle option contract.

Even if the Examiner’s contention that Broadspeed’s booking fee is the same as vehicle option (which is denied), the Appellant still respectfully reject for the reason given that vehicle option is calculated based on first and third data BUT as suggested by the

10 Examiner (see above), Broadspeed’s booking fee is calculated based on profit/loss margin. Given the two different inputs (1st and 3rd data vs Profit/loss Margin) surely without a doubt the combination and output must obviously be different meaning

Booking fee as taught in Wall could not be the same as Vehicle option premium as claimed. As there are differences (which was unexplained by the Examiner) then it is

15 reasonable to suggest Wall failed to teach calculating vehicle option fee and vehicle option contract as well.

Claims 5,12

20 (The Appellant refers to Page 9 of Answer.)

The examiner says that “...it is noted that the features upon which Appellant relies (ie for all users to see another’s transaction) was not recited in the rejected claim(s).

25 With respect, the meaning of these words are found in the claimed element “posting transaction details accessible by all users.” (underlined mine).

It is not deniable that “accessible” has the same meaning as available to see another’s
30 transaction.

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The Appellant also reject the Examiner's contention that Broadspeed's booking fee is the same as vehicle option for the reason given that vehicle option is calculated based on first and third data while as reasoned by the Examiner, Broadspeed's booking fee is calculated (which is denied) based on profit/loss margin.

5

Claims 6,13,19

(The Appellant refers to Page 9 of Answer.)

10

While Wall discusses a booking fee involved in the sale of vehicles, the Examiner had reasoned that Broadspeed's booking fee is calculated (which is denied) based on profit/loss margin. However, the claimed invention's vehicle option is calculated based on first and third data which means the resulting booking fee and vehicle option are two different thing (based on input).

15

Therefore, given booking fee and vehicle option are different then Broadspeed's uses booking fee and not vehicle option.

20

Claim 7,14,20

(The Appellant refers to Page 10 of Answer.)

25

The examiner says " It is unclear what Appellant means by These claims relate to using vehicle option to sale a vehicle by user."

30

By way as background, in the world of financial options, there are two types – ie call and put. This claimed invention is mindful of the difference in said call and put. The call option allow a user to purchase the vehicle by paying the exercised price (3rd data) and

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the put option allows a user to sell the vehicle by exercising the put option at the exercised price (3rd data).

The put option is the reverse of the call option and useful to protect downside say where

5 the vehicle price is dropping. For example when the contracted option vehicle price for BMW is 100 in 2008, the market price has dropped to 10 in 2010. The user would exercise his option to sell to the buyer at 100 instead of selling it in the market at 10. On the other hand the buyer was expecting the price to go higher than 100 so he was willing to purchase at 100 in 2008.

10

It is clear users in Broadspeed could only BUY and not SELL.

For the reasons above, the Appellant respectfully submits ALL the rejections should be

15 reversed.

Much Obliged,

A handwritten signature in black ink, appearing to read "Khai Hee Kwan".

20 Khai Kwan

Appellant/Applicant

24 June 2008

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Appendix

Text of Claims as per this Appeal.

5

1. A method for determining vehicle option premium to purchase or sale a new vehicle over a network connected to a central controller and a plurality of terminals, comprising the steps :

10

providing a vehicle manufacturer system linked to said network;

15

receiving over said network at said central controller, vehicle pricing information comprising first data representative of time to delivery of said new vehicle, a second data representative of a delivery destination of said new vehicle and third data representative of a price said user is willing to pay for said new vehicle;

calculating at said central controller the vehicle option premium based on said first data and said third data;

20

outputting the vehicle option premium to the user for decision over said network;

upon acceptance by said user of said vehicle option premium at said central controller, performing a payment transaction for said premium or a deposit over said network; and

25

creating a vehicle option contract to lock in said third data.

2. The method according to claim 1, whereby said calculating is using binomial option pricing model.

5 3. The method according to claim 1, wherein for said calculating step the vehicle option premium is based at least in part on formula:

$$\text{Vehicle option premium} = B*D*L*V$$

10 B represents a base value, D is factor related to a period before delivery date, V is factor related to a historical volatility of prices for the new vehicle and L is factor related to expected interest in the new vehicle.

15 4. The method according to claim 1, wherein the calculating step for the vehicle option premium is based on a modified Black Scholes consisting :

$$Xe^{-rT} N(-d_2) - S N(-d_1)$$

20 Where **S** represents a current price of new vehicle,

N() represents an area under the normal curve,

X represents said price the user is willing to pay for said new vehicle,

r represents a risk-free interest rate,

T represents said time to delivery of said new vehicle,

25 **σ** represents a volatility of the new vehicle logarithmic price,

$$d_2 = d_1 - \sigma \sqrt{T} \quad \text{and} \quad d_1 = [\ln(S/X) + (r + \sigma^2/2) T] / \sigma \sqrt{T}.$$

5. The method according to claim 1, further comprising the steps of :

receiving an indication that a user has purchased the vehicle option;

5 updating a customer database to record purchase of the vehicle option ; and

posting transaction details accessible by all users.

10 6. The method according to claim 1, further comprising the steps of:

receiving a user's request to purchase a vehicle utilising user's vehicle option;

performing a payment transaction to pay the price; and

15

updating a database to reflect the vehicle option is used.

7. The method according to claim 1, further comprising the steps of:

20

receiving a user's request to sell vehicle using user's vehicle option;

performing a payment transaction to pay the price; and

25

updating a database to reflect the vehicle option is used.

8. A computer program product for use in a system having at least one client workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer program product comprising:

5

a computer usable medium having computer readable program code physically embodied therein, said computer program product further comprising:

computer readable program code implementing the method of claim 1 .

10

9. A computer program product for use in a system having at least one client workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer program product comprising:

15

a computer usable medium having computer readable program code physically embodied therein, said computer program product further comprising:

computer readable program code implementing the method of claim 2 .

20

10. A computer program product for use in a system having at least one client workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer program product comprising:

25

a computer usable medium having computer readable program code physically embodied therein, said computer program product further comprising:

computer readable program code implementing the method of claim 3 .

11. A computer program product for use in a system having at least one client

5 workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer program product comprising:

a computer usable medium having computer readable program code physically embodied

10 therein, said computer program product further comprising:

computer readable program code implementing the method of claim 4 .

12. A computer program product for use in a system having at least one client

15 workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer program product comprising:

a computer usable medium having computer readable program code physically embodied

20 therein, said computer program product further comprising:

computer readable program code implementing the method of claim 5 .

13. A computer program product for use in a system having at least one client

25 workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer program product comprising:

a computer usable medium having computer readable program code physically embodied therein, said computer program product further comprising:

computer readable program code implementing the method of claim 6 .

5

14. A computer program product for use in a system having at least one client workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer program product comprising:

10

a computer usable medium having computer readable program code physically embodied therein, said computer program product further comprising:

computer readable program code implementing the method of claim 7 .

15

15. A computer system having at least one client workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer implementing the method of claim 1.

20

16. A computer system having at least one client workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer implementing the method of claim 2.

25

17. A computer system having at least one client workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer implementing the method of claim 3.

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18. A computer system having at least one client workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer implementing the method of claim 4.

5 19. A computer system having at least one client workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer implementing the method of claim 6.

10 20. A computer system having at least one client workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer implementing the method of claim 7.

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Evidence Appendix

NONE

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Related Proceedings Appendix

NONE